

ORDINANCE NO. 12-85

ORDINANCE GRANTING A VARIANCE PERMIT TO ALLOW AN INDOOR SOCCER FACILITY WITH A RESTAURANT AS AN ANCILLARY USE TO SELL AND SERVE BEER AND WINE FOR CONSUMPTION ON PREMISES ON PROPERTY ZONED M-1 (INDUSTRIAL DISTRICT), AND TO ALLOW 30 PARKING SPACES, WHERE 72 PARKING SPACES ARE REQUIRED, CONTRA TO HIALEAH CODE §§ 98-1371(a)(1) AND 98-2189(7). **PROPERTY LOCATED AT 8081 WEST 28 AVENUE, HIALEAH, FLORIDA.** REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board recommended approval of this ordinance at its regular meeting of November 14, 2012; and

WHEREAS, Petitioner proffered a declaration of restrictive covenants, to which the City accepts.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The below-described property is hereby granted a variance permit to allow an indoor soccer facility with a restaurant as an ancillary use to sell and serve beer and wine for consumption on premises on property zoned M-1 (Industrial District), and to allow 30 parking spaces, where 72 parking spaces are required, contra to Hialeah Code §§ 98-1371(a)(1) and 98-2189(7), which provide in pertinent part: “The permitted

uses of the M-1 industrial district are the following: (1) Any uses permitted in a C-2 liberal retail commercial district, except that restaurants shall not sell, offer for sale, deliver, serve or permit to be consumed on the premises any alcoholic beverages, wine and/or beer.” and “Off-street parking shall be provided in accordance with the following minimum standards...(7) *Commercial uses, not found elsewhere in this section.* One parking space for each 200 square feet of gross floor area of the floor with the greatest floor area within the building, and one parking space for each 500 square feet of the remaining floor area.”, respectively. Property located at 8081 West 28 Avenue, Hialeah, Miami-Dade County, Florida, zoned M-1 (Industrial District) and legally described as follows:

LOTS 1, 2, 3 AND 4, IN BLOCK 6, OF PALMETTO I-75 INDUSTRIAL CENTER SECTION TWO, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 117, AT PAGE 48, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the

city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 5: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

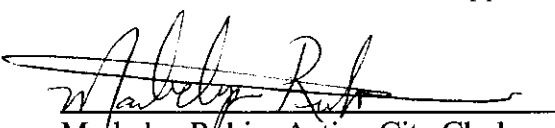
PASSED and ADOPTED this 11 day of December, 2012.


THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.


Isis Garcia-Martinez
Council President

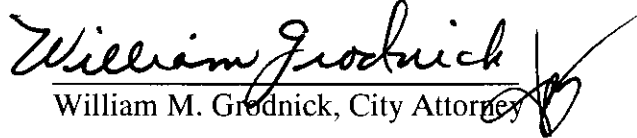
Attest:

Approved on this 13 day of DEC, 2012.


Marbelys Rubio, Acting City Clerk


Mayor Carlos Hernandez

Approved as to form and legal sufficiency:


William M. Grodnick, City Attorney

SALE\LEGISLATION\2012-ORDINANCES\8081W28AVI-2COPbevaragelicense-restaurantM-1-parking.doc

Ordinance was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".



CFN 2013R0042684
OR Bk 28447 Pgs 1844 - 1847; (4pgs)
RECORDED 01/16/2013 11:01:24
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

This instrument was prepared by:
Name: Cesar Mestre, Jr. Esq.
Address: The Law Offices of Cesar Mestre, Jr.
7600 West 20th Avenue
Suite 220
Hialeah, FL 33016

(Space Reserved for Clerk)

DECLARATION OF RESTRICTIVE COVENANTS

I, **Jose Pelaez**, being the owner in fee simple of that certain parcel of land located in the City of Hialeah, Florida (the "City") which is legally described as follows:

See Exhibit "A"

make the following Declaration of Restrictive Covenants covering and running with the above property, specifying that this restriction during its lifetime shall be for the benefit of and a limitation upon all present and future owners of the real property described above (the "Property"), in favor of and enforceable by the City of Hialeah, Florida.

In connection therewith, the undersigned covenants, represents and agrees as follows:

- (1) **Permitted Uses.** The property shall be used for the operation of an indoor soccer facility. There shall be a restaurant operated inside the facility for the enjoyment of the indoor soccer facility patrons only. The operation of the use shall be ancillary to and dependent on the operation of the indoor soccer facility. If the indoor soccer facility ceases to operate, the owner, operator and any successor shall cease operating the restaurant and shall relinquish any state license and city business tax receipt for the operation of a restaurant and the sale of alcoholic beverages.

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- (2) **Hours of Operation and Parking.** The indoor soccer facility and restaurant shall operate on weekdays between the hours of 5:00 p.m. and 1:00 a.m. On weekdays, the indoor soccer facility and restaurant shall operate until 1:00 a.m. Any parking demands resulting from the operation of the indoor soccer facility shall be on site. The indoor soccer facility and restaurant, as a result of its operation during the hours allowed, shall not disrupt, impede, obstruct or hinder the free flow of vehicular traffic on to, out of, and throughout the property or cause any disruption to parking on the property.
- (3) **Restaurant Operation.** The restaurant shall only operate during the hours the indoor soccer field is open for business. The restaurant is subject to all state and municipal code provisions applicable to restaurants. Specifically, the sale of beer or wine for consumption on the premises shall be incidental to the sale and consumption of a full-course meal prepared on site pursuant to Hialeah Code §6-66.
- (4) As a means of enforcement for any violations of these restrictions, the Owner consents to the revocation of the business tax receipt and rescission of the zoning variance allowing consumption of alcohol in an M-1 district and for a parking variance. Thereafter, the premises shall only be used pursuant to the applicable zoning district regulations.

(5) **Miscellaneous:**

A. This Covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the above-described Property and shall constitute a covenant running with the land and may be recorded in the Public Records of

Miami-Dade County, Florida. This covenant shall remain in full force and effect and shall be binding upon the undersigned, its (their) heirs, successors, and assigns until such time as the same is modified, amended or released and may only be modified, amended or released by a written instrument executed by the then owner having fee simple title to the Property affected or to be affected by such modification, amendment, or release; provided, however, the same is also approved by the City Council and the Mayor of the City of Hialeah, or its successors, by resolution, upon advertised notice, or by ordinance if the covenant is adopted by ordinance or as otherwise provided in Hialeah Charter.

B. Where construction has occurred on said Property described herein, pursuant to a permit issued by the City of Hialeah, and inspection made and approval of occupancy is given by the City, the same shall create a conclusive presumption that the improvements thus constructed comply with the intent and spirit of the restrictions referenced herein and this Declaration of Restrictive Covenants shall not be construed as clouding title on any of said Property on which such development has occurred.

[Signature Pages to Follow]

Declaration of Restrictions
Page 4

IN WITNESS WHEREOF, we have hereunto set our hands and seal this 11th day of December, 2012.

Signed, sealed and delivered

in the presence of:

By: _____

Jose Pelaez, Owner

Signature

Print Name

Signature

Print Name

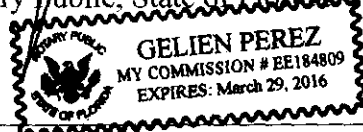
STATE OF FLORIDA)

COUNTY OF MIAMI-DADE) ss:

I HEREBY CERTIFY that on this 11th day of December, 2012, before me, an officer duly authorized by the State of Florida in the County of Miami-Dade, to take acknowledgments, personally appeared Jose Pelaez to me known to be the person(s) described herein and who executed the foregoing instrument, and he/she/they acknowledged before me, under oath, that he/she/they executed same.

WITNESS my hand and official seal this _____ day of November, 2012

Notary Public, State of Florida



(Name of Notary Public: Print,
Stamp, or Type as Commissioned)

☐ Personally known to me, or

☒ Produced identification:

P420-420-49-022-0

Identification produced:

☐ Did take an oath

☐ Did NOT take an oath